1179.

SUPREME COURT OF THE UNITED STATES.

No. 143.

JOHN GOODING, JUNR., ADMINISTRATOR DE BONIS NON OF JOHN GOODING, DECEASED, APPELLANT,

vs.

CHARLES OLIVER AND ROBERT M. GIBBS, EXECUTORS OF ROBERT OLIVER, DEC'D.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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GIDEON, Print.

1850.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-three.

Present, the honorable R. B. Taney, chief justice of the Supreme Court of the United States; William F. Giles, judge of Maryland district; Wm. Meade Addison, esquire, attorney; John W. Watkins, esq., marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

JOHN GOODING, jr., adm'r d. b. n. of John Gooding,
vs.
CHARLES OLIVER and ROBERT M. GIBBES, surviving ex'ors of Robert Oliver.

Be it remembered that heretofore, to wit, on the twenty-eighth day of November, in the year of our Lord one thousand eight hundred and fifty-three, the said John Gooding, junior, administrator de bonis non of John Gooding, deceased, filed in the circuit court here his bill of complaint against Charles Oliver and Robert M. Gibbes, surviving executors of Robert Oliver deceased, in the words and of the tenor following, to wit:

To the honorable the judges of the circuit court of the United States for the district of Maryland.

The bill of complaint of John Gooding, jr., administrator de bonis non of John Gooding, deceased, late of the city of Baltimore, humbly complaining, showeth to your honors: That said John Gooding, together with divers other persons, associated themselves together in the year eighteen hundred and sixteen, under the name of the "Mexican Company of Baltimore," and having afterwards, and in their character of such associates, and by their name aforesaid, acquired large claims against the Mexican republic, which were fully recognised by the acts or decrees of the Congress of that government, of the day of , 1823, and 28th June, 1824. That the amount of said claim or claims was for the sum of one hundred and sixty thousand five hundred sixty-three dollars and seventy-two cents, and the share of the said John Gooding in such claim was one undivided ninth part thereof. That a convention was made between the Government of the United States and the Republic of Mexico, on the 11th April, 1839, to ascertain and adjust the claims of citizens of the United States against the said republic. That an act of Congress to carry into effect

the provisions of said treaty was passed on the 12th June, 1840. That, by virtue of said convention and act of Congress, a board of commissioners was duly appointed and organized in the city of Washington, to receive and adjudicate upon such claims of the citizens of the United States embraced within the terms of the above treaty as might be brought before them. That a certain John Glenn and David M. Perine, claiming to act on behalf of, and as trustees for said Mexican Company, or some of the members thereof, or their representatives, caused the claim of the said company to be submitted to the board of commissioners, with the proper evidence to sustain its amount and validity. That, accordingly on the 9th day of June, 1841, an award was passed by the said board in favor of the members of said association for the whole of the aforesaid sum of $160,563 72 cts., with interest, at the rate of 5 per centum per annum, from the 15th April, 1817. That it was the object of said Glenn and Perine, as indeed it was their duty, according to the general law, as well as by the terms of said award, on obtaining the funds for the amount awarded to them, to have the same carried into a court of equity and distributed under its orders, according to the rights of the parties claiming "or to claim the same." That, accordingly, upon an amicable suit for the distribution of said funds instituted in Baltimore county court, sitting in equity, by Philip Thomas and John White *vs.* Dennis Smith, and Glenn, and Perine, and others, on the 4th October, 1841, such proceedings were had, that on the petition and pretended claim of Charles Oliver, Thomas Oliver, and Robert M. Gibbs, executors of Robert Oliver, the said share of one undivided ninth part of said funds had been brought into said court belonging to the said John Gooding, as one of the original members of said Mexican association, was decreed to be paid over to the said executors of Robert Oliver.

That Charles Oliver and Robert M. Gibbs, surviving executors of Robert Oliver, (Thomas Oliver having departed this life,) actually received under said decree for and on account of the said share of Gooding, as a member of said company, the following stocks and money, that is to say—

$3,998 56 of United States 5 per cent. loan at -	$3,998 56
32,098 07 of do. do. 6 do. do. at -	34,362 23
And in money - - - -	3,045 63
Making as the sum total - - -	$41,406 41

That the said sum of forty-one thousand four hundred and six dollars and forty-one cents, so received by said executors, under the decree aforesaid, was paid and delivered to them in the manner above set forth, on the 11th April, 1850, by the said Glenn and Perine, under the decision and decree of the court as aforesaid. That said sum was the balance found to be due in said suit on account of the undivided share of said Gooding, in the ascertainment settlement, and distribution of the joint and partnership funds so as aforesaid awarded by the

commissioners to Glenn and Perine, for the use of and in trust for the benefit of the said Baltimore Mexican Company, and whom it might concern; and after all deductions had been made from the said funds for or on account of the prosecution of the said claim against the Mexican government, and all commissions, fees, costs, charges, and expenses, afterwards incident to the investment and reinvestment of said funds, and the proceedings in the court for the final ascertainment and distribution of the same among the parties or members of said association or their assignees and legal representatives.

Your orator further states, that the whole funds awarded to the said Glenn and Perine for and on account of the claim of said Mexican Company were soon, or immediately after the same were received, carried into Baltimore county court, sitting in equity, and submitted to the jurisdiction of that tribunal for distribution, and in the interim, until it should be ascertained what charges there were against the whole company affecting the entire fund, and who, after these charges should be defrayed, was, as a member of said company, entitled to his individual or distributive share, the said Glenn and Perine did proceed, as money came to their hands, with the sanction and under the order of said court, to invest the said funds and dividends, and profits thereof, from time to time, with their increase and accumulations; and that the same in this manner increased to such an amount in the whole, that the share thereof of the said Gooding, as a member of said company, amounted, in five and six per cent. loans of the United States and in money, to the sum of $41,406 41, as the same is hereinbefore particularly stated. That the said funds were by the said Glenn and Perine, in pursuance of the order of the court aforesaid, kept separate and distinct, and are clearly traceable, from the time they came to their hands, through every investment made by them, down to the time when said stocks and money were delivered to the said executors as for and on account of the said share of Gooding, in his capacity as a member and partner of said Mexican Company. That a portion of said stocks and money, constituting together the aforesaid sum, were, in fact, by said Glenn and Perine, paid and delivered over to other persons than said executors, but as your orator charges, in virtue of a contract, order, or agreement made by and between such executors and other persons or person, and that therefore in law and equity must be taken as a virtual payment and delivery to said executors themselves.

Your orator further states that the said Robert M. Gibbs and Charles Oliver are citizens of the State of New York, and your orator is a citizen of the State of Maryland.

Your orator further states that since the said stocks and money have come into the hands of said executors, they have been kept and preserved separate and distinct, together with the dividends and profits thereof, and the increase, accumulations and investments of the same, and its proceeds, which have been from time to time received by said executors or for them, and by their authority; that how, and in what manner, and to what amount the money and proceeds of said stocks,

since the same have come to the hands of the said executors, have been invested and reinvested, your orator is altogether ignorant and without any means of the knowledge thereof; that the same is within the exclusive knowledge of the said executors.

Your orator further states to your honor, that the said John Gooding departed this life on or about the 15th day of February, in the year 1839, in the city of Baltimore; that no letters of administration were ever taken out upon his estate, until they were in due form of law granted to said John Glenn by the orphan's court for Baltimore city, on the 15th day of February, in the year 1852; and that he gave bond, approved by said court, for the faithful performance of the trust reposed in him. That since the said Glenn has departed this life, and letters of administration "de bonis non" has since then, to wit, on the day of November, A. D. 1853, been granted to your orator by the orphans' court of the city of Baltimore, upon the estate of the said John Gooding, and that your orator has given bond with security duly approved for the faithful execution of the trust reposed in him.

That neither said Gooding, nor said Glenn, administrator, nor your orator were ever present, or parties, or in any manner bound by any proceedings, or order, or decree, had or passed in the aforesaid suit of Thomas and White *vs.* Dennis Smith, in Baltimore county court, as a court of equity, or in any appeal from the doings of said court, to the court of appeals for the western shore of Maryland, and that any thing done or transacted in either of said courts was transacted in the absence of the said Gooding, and his said administrator, and your orator; that the settlement and adjustment of the amount of the partnership funds of the said Mexican Company, and of the charges, commissions, and costs, to which they were liable in solido, and the distribution of the remainder of said fund by the decree of the court, into the several shares to which each member of said company was entitled, are in no manner binding upon, or even evidence against, the said Gooding or your orator. Nevertheless your orator, waiving his right to object to said settlement as to the amount thereof only, is willing that the said executors should be charged only with the sums, and stocks, and the dividends, profits, increase, and accumulations thereof so as aforesaid decreed to them, and payed and delivered to them, or to any other person or persons, under their order and agreement, and all the dividends, proceeds, and accumulations of such stocks and money, since they were so as aforesaid paid over into their hands; and your orator expressly charges, that said executors had no title or right of any kind whatever to any portion of said money and stock decreed as aforesaid to them for and on account of the said share of Gooding, as a member of the Mexican Company of Baltimore, and that the same came to their hands, and are now held by them in the contemplation of a court of equity, as trustees for the exclusive benefit of your orator.

And your orator has frequently applied to the said executors, and demanded of them to pay and deliver over into the hands of your orator all the money so as aforesaid received by them, for or on account of the

share of John Gooding; and to transfer and assign to your orator all the said stocks or certificates of stocks held by them for and on account of the said share of John Gooding, and the proceeds and accumulations thereof, and to come to an account with your orator concerning the same, and to pay and deliver over to your orator whatever he might, upon such accounting, be entitled to receive, your orator being willing to pay to them whatever might be found due from him touching said claims.

That said Robert Oliver departed this life in the month of September, in the year 1834, having first duly made and published his last will and testament, wherein he appointed the said Robert M. Gibbs, Charles Oliver, and Thomas Oliver, his executors. That Thomas Oliver departed this life in the year 1849 or 1850, and that said executors some time ago duly qualified to act in that character. That your orator had well hoped that the said surviving executors would have complied with his aforesaid reasonable requests. But now, so it is, may it please your honor, that said Robert M. Gibbs and Charles Oliver, contriving and intending to defraud and injure your orator, have altogether refused so to do.

To the end, therefore, that the said Robert M. Gibbs and Charles Oliver may full, true, and perfect answers make to the statements and allegations aforesaid, as fully as if the same were again herein repeated and they were particularly interrogated thereto; and in particular that they may state whether the said Mexican Company of Baltimore had not claims upon the Republic of Mexico; and whether the same were not enforced by treaty between the United States and that country, and the award of commissioners under the treaty, and act of Congress to carry the same into effect; whether the said John Gooding, in his lifetime, was not a member of said association, and as such entitled to one undivided ninth part or share of the claim of said company upon the Mexican republic; whether the sum claimed by said company was not awarded by said commissioners to said Glenn and Perine, as trustees; whether they, the said executors, did not receive the proceeds of the share of said Gooding, in money and stocks; and at what time and in what stocks did they so receive it; and that they set forth what has become of the said stocks and the dividends thereof, and its investments and accumulations since they received the same; and that they set forth particularly what was their title to said Gooding's share in said funds; did they ever receive a transfer or assignment from said Gooding in his lifetime, or your orator since his death, to said share or any part thereof; if not, by what claim or pretence of a claim did they cause or procure the amount of said share to be transferred to themselves? Did they ever pay any consideration whatever therefor, either to the said Gooding or your orator? And that the said executors may be decreed to transfer to your orator all the stocks or certificates of loan received by them; and all stocks into which the dividends thereof have been converted; and also all money paid to or received by them on account of said share, or the proceeds and profits thereof; and that

they may account to your orator for all stocks, money, and the proceeds thereof; and that they may be decreed to pay over to your orator whatever money on such accountings may be found due to him, and to transfer to your orator all the said stocks; and that your orator may have such other and further relief as the circumstances of his case may require and may seem meet and equitable to your honors. May it please your honors to grant to your orator the United State's writ of subpœna to the said Robert M. Gibbes and Charles Oliver, surviving executors of Robert Oliver, deceased, commanding them to appear in this court on some certain day to be therein named, to answer the premises and abide by and perform such decree as may be passed therein, and as in duty bound, &c., &c.

G. L. DULANY,
Sol'r for complainant.

Answer, filed 29th November, 1853.

JOHN GOODING, JR., administrator de bonis non of John Gooding,
vs.
CHARLES OLIVER, ROBERT M. GIBBES, surviving executors of Robert Oliver.
} In equity.

To the honorable Roger Brook Taney and William F. Giles, judges of the circuit court of the United States for the Maryland district, sitting in equity.

The joint and several answer of Charles Oliver and Robert M. Gibbes, surviving executors of Robert Oliver, to the bill of complaint of John Gooding, junior, administrator de bonis non of John Gooding.

These respondents, saving to themselves all exceptions to said bill, whether for form or substance, for answer nevertheless thereto, or to so much thereof as they are advised it is material for them to answer unto, do answer and say as follows:

That they are informed and believe, that the said John Gooding was a citizen of the State of Maryland, and a member of the Mexican Company of Baltimore, which was formed in that city in the year 1816, for the purpose of assisting, and which did assist General Mina to revolutionize Mexico, then a province of Spain, a country at the time in amity with the United States; and that the said company made a claim in the premises on the Mexican government, but these respondents do not know whether the decrees of that government mentioned in the bill were passed, or what was their purport.

They are also informed and believe, that said Gooding's share of said claim was one-ninth, and that the convention with Mexico was made, and the act of Congress passed to carry it into effect, as stated in the said bill; and that a mixed commission was constituted under said convention and act of Congress to adjudicate claims; and that acting under the authority conferred upon them by a deed dated the 8th May,

1841, John Glenn and David M. Perine prosecuted the claim of said Mexican Company before said commission, and that said commission sustained said claim, and passed an award in its favor; and that said Glenn and Perine, on or about the 26th October, 1841, received from the Government of the United States certificates of the payment of all said Gooding's share thereof; and that in a suit instituted on the equity side of Baltimore county court, in the year 1841, by Philip E. Thomas and John White, against Dennis A. Smith and others, the said court, after first investing the same pending the controversy, distributed the proceeds of said award, and such proceedings were had in said suit upon an appeal to the court of appeals of Maryland, that a decree was passed by said court at June term, 1849, adjudging to these respondents, and Thomas Oliver, their co-executor, since deceased, the whole amount of said Gooding's share of said award, as will more fully appear by a copy of said decree, with the reasons therefor; and that under process issued from said court to enforce said decree, the said Glenn and Perine, on the 11th April, 1850, paid over to these respondents and their said co-executor, the net proceeds of said Gooding's share.

And these respondents further say, that on the 3d and 6th of January, 1852, they paid over and distributed the whole of what was so received on account of the share of said Gooding, to the persons entitled under the will of the said Robert Oliver to receive the same, and took their receipts and releases therefor, which they are prepared to produce when required.

These respondents further say, that they do not know, and save from said bill are not informed, and do not therefore admit, but put the complainant to prove the time of the death of the said John Gooding and the grant of the letters of administration, as alleged by said bill; but they admit that their testator, Robert Oliver, died in the month of December, 1834, and that they are his surviving executors, their co-executor, Thomas Oliver, having departed this life. These respondents are also informed and believe, that said John Gooding on the 23d June, 1819, applied for the benefit of the insolvent laws of Maryland, and on the same day made to George Winchester, esquire, who was duly appointed his provisional trustee, and that the said Winchester was afterwards appointed permanent trustee of said Gooding; and that at March term, 1825, of Baltimore county court, William H. Ward, one of the judges of that court, passed the order of sale in regard to said Gooding's estate; and that on the 2d April, 1825, the said George Winchester, in pursuance of said order, sold to said Robert Oliver the said Gooding's share in the Mexican Company for the sum of two thousand dollars, which was paid him, and made and delivered an assignment thereof, and receipt therefor, and that said sum was the fair market value of said share at the time of such sale.

And these respondents are further informed and believe, and therefore aver, that the said sale to and purchase by their testator, of said Gooding's share in the Mexican Company, was fairly and bona fide made, and that in passing the order of sale thereof, as herein before men-

tioned, Baltimore county court had full jurisdiction over the subject, and that the title to said share passed under the same, and also by force of the act of Assembly of the State of Maryland, passed at December session, 1841, chapter 309.

And these respondents plead the statute of limitations in bar to the bill of complaint and the claims therein and thereby made, and further rely on, and plead in bar, that the remedy of the complainant, if any where, (which is denied,) is at law; and they further plead in bar the illegality of the original transaction out of which the claim sued for arises, and pray to have the same benefit of all these their defences as if the same were formally and technically pleaded.

And these respondents further aver, that letters testamentary on the estate of Robert Oliver were granted to them and their deceased co-executor on the 10th June, 1835, and that public notice was given by them in that year, in conformity with the requisitions of the testamentary law of Maryland, to all persons having claims against said deceased, to exhibit the same to them, with the vouchers therefor, on or before the 16th March, 1836, and that the said Gooding hath not at any time exhibited any claim against said deceased; and that the pretended claim of the complainant was not exhibited to them within the time limited by said notice, or before the payment over and distribution by them herein before set forth.

And these respondents are advised and believe, that the facts and circumstances above detailed are a bar, and they do hereby plead and rely on the same in bar of any recovery by the complainant in this cause.

And these respondents are further informed and believe, and therefore aver and plead, in bar of the recovery sought by the bill, that public notice was given in one or more of the Baltimore daily newspapers, and elsewhere, to all claimants on Mexico under the treaty of 1839, to produce their claims before the mixed commission herein before mentioned, and also to all persons interested in the funds distributed by Baltimore county court, in the case herein before mentioned, to exhibit their claims therein to said court, as will appear by copies of such notices and certificates of the publication thereof herewith filed, marked O G, No. 7; and that neither the said John Gooding nor his administrator ever made any claim either before said commission or in said court upon any account.

And they further say that said Gooding made a second application for the benefit of the insolvent laws of Maryland on the 13th October, 1823, and that Robert Wilson, jr., was duly appointed and qualified as his permanent trustee; and that the said Gooding made a third application for the benefit aforesaid on the 9th November, 1829, and that on said third application John Barney and C. F. Mayer were duly appointed and qualified as his permanent trustees.

REVERDY JOHNSON,
J. M. CAMPBELL,
For defendants.

Endorsed: Answer of defendants admitted without oath.
G. L. DULANY,
Solicitor for complainant.

Exhibit O G, No. 7, referred to in the answer.

(Official.)

DEPARTMENT OF STATE,
Washington, April 15, 1840.

Claimants upon the Government of the Mexican republic whose cases asking the interposition of the Government of the United States may have been presented to this department, or to the diplomatic agent of the United States at Mexico, prior to the 11th April, 1839, are hereby notified, that pursuant to a convention between the two governments of that date, a joint commission to hear and decide upon the claims will meet within this city within three months from the 7th instant.

Which notice is prefixed to the following certificate of publication, to wit:

OFFICE OF THE AMERICAN,
Baltimore, Nov. 25th, 1843.

This is to certify, that the annexed copy of an official notice to claimants upon Mexico was published in the American and Commercial Daily Advertiser, on the 17th day of April, 1840, and that the same was published only once.

DOBBIN, MURPHY & BOSE,
Per E. A. SLICER.

(*No.* 3.)—*Claims on Mexico.*

Notice is hereby given to all persons having claims upon the Republic of Mexico, which were submitted by the convention of April the 11th, 1839, to the mixed commission now sitting in the city of Washington, that more than half the time limited by the said convention for the session of the said commission has already expired, and that it will close its labors within nine months from this date, yet not one-half of the claims which it was organized to adjust have been prepared for its consideration.

In consequence of a want of prepared cases, the business of the board has been delayed; claimants are, therefore, hereby urged to complete the preparation of their cases with the least possible delay, to the end that the commission may be enabled to accomplish the objects for which it was constituted.

By the order of the Board of Commissioners.

ALEXANDER DIMITRY,
LUCAS DE PALACIO Y MAGAROLA,
Secretaries.

Washington, June 16.

Which said notice is prefixed the following certificate of publication, to wit:

OFFICE OF THE AMERICAN,
Baltimore, Nov. 25th, 1843.

This is to certify, that the annexed notice to persons having claims upon the Mexican republic, signed by the secretaries to the Board of Commissioners, was published in the American & Commercial Daily Advertiser, on the 2d July, 1841, and every other day thereafter, for two weeks.

DOBBIN, MURPHY & BOSE,
Per E. A. SLICER.

Notice.

All persons interested in the claims of Dennis A. Smith and the Mexican Company of Baltimore, on the Government of Mexico, are hereby notified to present their vouchers, properly authenticated, to the undersigned, appointed special auditor by Baltimore county court, in the equity case of Philip E. Thomas and John White, trustees, against Dennis A. Smith and others, on or before the first day of February, 1842. J. J. ATKINSON, *Auditor*.

Baltimore, October 27th, 1841.

OFFICE OF THE AMERICAN,
Baltimore, September 8th, 1843.

This is to certify, that the annexed advertisement of notice to persons interested in the claims of Dennis A. Smith and the Mexican Company of Baltimore, was published in the American and Commercial Daily Advertiser, once a week, for three successive weeks, commencing on the 28th day of October, 1841.

DOBBIN, MURPHY & BOSE,
Per EDWARD A. SLICER.

Notice.

In pursuance of an order of Baltimore county court, sitting as a court of equity, passed in the case depending in said court, wherein Philip E. Thomas and John White, trustees, are complainants, and Dennis A. Smith and others are defendants, notice is hereby given to all persons having claims upon the funds awarded to the Mexican Company of Baltimore, and to Dennis A. Smith, by the commissioners under the treaty between the United States and Mexico, to file their said claims with the undersigned, special auditor in the above case, with the vouchers and proofs to support the same, on or before the fifth day of October next, otherwise they may be debarred from the benefit of the distribution of the funds aforesaid, which will thereafter be made.

J. CARRERE, *Special auditor*.

Which notice is prefixed to the following certificate of publication, to wit:

OFFICE OF THE AMERICAN, BALT., *Nov. 2nd*, 1843.

This is to certify that the prefixed notice was published in the American once a week for three successive weeks, commencing on the 5th September, 1843. DOBBIN, MURPHY & BOSE.

Agreement filed 29th November, 1853.

Circuit court of the United States, district of Maryland.

JOHN GOODING, jr., administrator d. b n. of John Gooding,
vs.
ROBERT M. GIBBES and others, executors of Robert Oliver.

It is admitted in the above case, that said John Gooding died in the city of Baltimore, February 15th, 1839, intestate, and that administration was granted upon his estate to the late John Glenn, esq., by the orphan's court of Baltimore city on the 15th day of February, 1852, and that he gave bond, with security duly approved, for the faithful performance of his duties; that since the death of the said Glenn letters of administration d. b. n. have been granted to the complainant in this cause, in this present month of November, 1853, by said orphan's court, and that complainant has given bond, with security duly approved, for the faithful performance of the trust reposed in him.

It is further agreed, that the agreements in regard to evidence and admissions of facts and of the funds in the hands of said executors, so far as the same are applicable, made in the case of Goodwin's administrator and trustee, and James Williams, administrator, against said executors of Oliver, shall apply in the above cause in the same manner as if the same were herein set forth expressly. It is further admitted, that said Gooding made the application for the benefit of the insolvent laws specified in the answer, and that the order of Baltimore county court of March 4th, 1825, and the proceedings under the same order, took place as mentioned in said answer, and that Winchester, as permanent trustee of Goodwin, received two thousand dollars from Robert Oliver, for Gooding's share in the Mexican company, and made an assignment thereof to said Oliver, written on the back of the original order of sale aforesaid. And it is further admitted, that Gooding made a second application for the benefit of the insolvent laws on the 13th October, 1823, and that Robert Wilson, jr., was duly appointed and qualified as his permanent trustee; and that the said Gooding made a third application for the benefit of the insolvent laws on the 9th November, 1829, and that on said third application John Barney and Charles F. Mayer were duly appointed and qualified as his permanent trustees.

G. L. DULANY,
Solicitor for complainants.
REVERDY JOHNSON,
J. M. CAMPBELL,
Solicitors for defendants.

Baltimore, 29th Nov., 1853.

Agreement.

McBLAIR
vs.
OLIVER'S EXECUTORS.

GOODING, administrator of Gooding,
vs.
SAME.
} Filed 1st Dec., 1853.

WILLIAMS, adm'r of Williams,
vs.
SAME.

It is further agreed that the defendants may read in evidence from the printed record any of the pleadings, evidence, proceedings or decrees, either in Baltimore county court or in the court of appeals, in the case of Thomas and White against Glenn and others, for any purpose for which the same may be competent evidence in this cause.

G. L. DULANY,
Solicitor for complainant.
J. M. CAMPBELL,
For defendant.

Endorsed agreement.

This agreement applies to this case and to the case of Williams's administrator *vs.* Oliver's executors, and to the case of Gooding's administrator *vs.* Oliver's executors.

Afterwards, to wit, on the third day of December, in the year of our Lord one thousand eight hundred and fifty-three, the circuit court here made and passed the following decree, to wit:

Decree.

In the circuit court of the United States for the district of Maryland.

JOHN GOODING, jr., administrator of John Gooding,
vs.
ROBERT M. GIBBES and Charles Oliver, executors of Robert Oliver.
} In equity.

This cause standing ready for hearing and being submitted, the counsel for the parties were heard, and the proceedings read and considered.

It is thereupon, this third day of December, in the year eighteen hundred and fifty-three, by this court adjudged, ordered, and decreed that the bill of the complainant be, and the same is hereby dismissed; and that the complainant pay the defendants their costs of this suit, to be taxed by the clerk.

R. B. TANEY,
WILLIAM F. GILES.

1180

From which said decree, so as aforesaid passed, the said John Gooding, jr., administrator de bonis non by his solicitor aforesaid, in open court here hath prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December instant, and to him it is granted.

Thereupon, it is ordered by the court here, that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said Supreme Court, and the same are hereby transmitted accordingly.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid—

I hereto subscribe my name and affix the seal of the said circuit court this fifth day of December, in the year of our Lord one thou-
[SEAL.] sand eight hundred and fifty-three.

THOS. SPICER,
Clerk circuit court.